PETITIONER'S BRIEF

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 285

RICHARD HARRY LAYTON,
Petitioner

vs.

STATE OF OREGON

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

RICHARD HARRY LAYTON, in propria personia.

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STATEMENT OF THE CASE

Defendant was indicted on the 9th day of July, 1943, the Grand Jury of Polk County, with the crime of Mur- in the First Degree, for the killing of Ruth Hildebrand forcing her into the Willamette River, where she was wned, while attempting to forcibly ravish her.

To which Defendant entered a plea of not guilty and e notice of his purpose to show in evidence that he was ntally defective, under the provisions of Section 26-846 C. L. A., 1940.

The Defendant was born April 13th, 1907, he began to k and talk in his third year. Continued enuretic until

he was 14 or 15, in his 15th year he was conditionally passed from the 5th to the 6th grade; he continued in school but did not get out of the 6th grade until he was 17 years old, he could not do the work required in school; he got so big the other children laughed at him, and he quit school when he was 17; he was unable to care for himself among children near his own age and permitted them to impose on him; he played with children much smaller than himself, and talked of childish things and played with a 10 year old. (Tr. pp. 31, 44, 189-191, 195, 197, 224, 248-250, 257-265, 267, 269-271.)

Dr. Herman A. Dickel, a neuropsychiatrist, specializing in nerves and mental diseases, examined defendant July 15th, 1943. The Doctor applied the standard Stanford Intelligence Test and found that he had a mental age of 9 years and eight months and a intelligence quotient of only 65. (Tr. pp. 197-214.)

Dr. John C. Evans, Superintendent of State Hospital, examined the defendant July 27th, 1943, and, without applying a Standard Test, found him to be a dull-normal. (Tr. pp. 278-299).

Defendant was a seasonal worker; he maintained his car out of $100.00 per month while he was a police officer at Monmouth; he was officious, did not get along well and quit after 60 days; he was police officer at Sweet Home by the day, every other day, for 14 days and thereafter every day for about 30 days.

On the orders of Captain Gurdane, (Tr. p. 156.) without accusation or warrant, the defendant was taken by Sergeant Hadfield, an armed uniformed officer, from Hillsboro to the State Police Headquarters near Portland; no warrant had been issued, (Tr. pp. 26-27, 47, 171) the defendant was not advised of his right to counsel (Tr. pp. 27-28, 39-40, 49-50, 72, 77, 165, 171, 181-183); Captain Gurdane admitted that he was familiar with the right of accused to counsel and that he disregarded it.

Defendant was taken in restraint without warrant by Sergeant Walter James Hadfield of the State Police, who admitted that he knew of defendant's right to be taken before a magistrate and that he disregarded that right and with show of force if required to accomplish his purpose, took him not to or towards Dallas but to State Police Headquarters, at or near Portland, (Tr. pp. 26-27, 47, 171). When Hadfield reached State Police Headquarters, he ordered defendant to sit in a chair, where he was left sitting about 45 minutes, then he was taken into Captain Gurdane's office, there the named officers and Sergeant Sheridan, at least two of them with side arms, began to question defendant, (Tr. pp. 21, 23, 29, 31, 34-42, 47-54, 58, 61-72, 76-78, 89, 95, 99, 165, 167-172, 265, 268, 272-278).

The defendant was required to sit in an ordinary straight-backed chair, where he was kept continuously, save and except for necessary elimination and one or two

meals, (Tr. pp. 25, 28, 33-34, 39, 71, 79, 96, 166-167, 187
from the time he arrived at the Police Headquarters a
two-twenty in the afternoon until approaching noon th
next day, during which time he was questioned by fron
three to five officers, from three-thirty to six-ten, seven
ten to ten-fifteen, and from three o'clock to seven-fifteen
(Tr. pp. 34, 42, 47-54,61-72, 76-78, 89, 95, 99, 165-167-172, 263
268, 272-278).

Captain Gurdane testified that they wanted a confes
sion and it was their intention to keep defendant there
until they got it; but admitted that they could not have
kept him much longer because they were all getting too
sleepy.

From one-ten p. m., on the 7th day of July, 1943, a
which time defendant was taken into custody at Hillsboro
by Sergeant Walter Hadfield, until he was indicted by the
Grand Jury of Polk County, before noon on the 9th of
July, 1943, (Tr. pp. 49, 60, 76, 89, 90, 95, 97-98, 165) defend
ant was held without charge and without warrant, (Tr
pp. 26-27, 47, 171). He was not permitted during said time
to see or have counsel, (Tr. pp. 27-28, 39-40, 49-50, 72, 77
265, 171, 281-283) nor was he brought before a magistrate
until he was arraigned, about noon on the 9th of July
1943, (Tr. pp. 27, 47-48, 165, 171). All of which time he
was held without the privilege of contacting or seeing
friends or relatives, (Tr. pp. 18, 20, 21, 23, 26, 28-29, 31, 34

42, 46, 47-54, 58, 61-72, 76-78, 88-89, 95, 99, 165, 167-172, 265, 268, 272-278).

Ruth Hildebrand was a child of a family of eight, who met her death by drowning, one month and ten days before her eighteenth birthday. She was of a broken home (Tr. p. 156) and the neighbors had made an effort to protect her and her brothers and sisters, as shown by defendant's Exhibit B. Ruth was in the habit of going about rather freely and she was not missed from the 7th day of June, 1943, until her body was identified on the 21st day of June, 1943, (Tr. pp. 155-156). She sometimes went to Camp Adair, returning too late to go by stage from Monmouth to her home near Dallas. (Tr. pp. 174-175, 647). She had at times slept in petitioner's car and at times hitchhiked home. On one occasion defendant had takeu her and other girls home and at another time he took her home alone.

Private Cecile Ballard testified that he met Ruth, she being alone, in a park in the City of Salem, and that she was not then known to him or the soldier who was with him; that he saw her twice in Salem, and the third time, when in response to his invitation, she went to Camp Adair.

Near or after midnight, on the morning of June 8th, 1943, Ruth Hildebrand was hitchhiking her way home and petitioner picked her up near Monmouth on the road to Dallas. They stopped a time or two but finally parked in a tryst-

ing place commonly known as "Lover's Lane" on the bank of an eddy from the Willamette River, the same being several miles south and a little east of Independence and northeast of the reservation of Camp Adair.

The place had been freely used as a dumping ground for trash, rubble and miscellaneous dumpage from habitations in the vicinity, (Pl. Ex. 8). (Tr. pp. 56, 90, 94, 163).

Plaintiff's Exhibit 13 was found there, and a part of a brassiere, (Tr. pp. 16, 150, 154, 158, 160, 162, 179, 234).

Defendant parked his car; spread down the blanket, (Pl. Ex. 11) near the post standing just at the top of the bank. In the darkness neither knew where the bank was; both removed their clothing (Tr. pp. 148, 177, 230, 231, 234); there they had sexual intercourse, (Tr. pp. 17, 37, 55, 57, 67-68, 90, 177-178, 230, 235) after which Ruth fell over the bank and rolled into the water.

When the body was found it was without clothing except anklets; it showed no marks or bruises made before death, or was there evidence that the body had received a blow. (Tr. pp. 13, 15, 148-149).

ASSIGNMENT OF ERROR NO. V

The Court erred in admitting in evidence over the objection of defendant, State's Exhibit 13, the same being an article of clothing claimed to have been found June 21st, 1943, near the point where it was admitted that the

defendant had been with Ruth Hildebrand on the night of June 7th, 1943.

POINTS AND AUTHORITIES

26 Am. Jur. Homicide 446.

ARGUMENT

State's Exhibit No. 13 was found two weeks after it was admitted Ruth Hildebrand had met her death by drowning, (Tr. pp. 16, 150, 154, 160, 179). It was said to have been found hanging on a bush at a common trysting place called and commonly known as "Lovers' Lane. (Tr. pp. 56, 90, 94, 163). A place where trash, rubble, worn clothing and discarded articles had been dumped. (Tr. pp. 159, 161).

It was not shown to be an article of wearing apparel that had belonged to Ruth Hildebrand. The only showing was that it was the common quality, color and pattern that was worn by most women and that it had been sold by a J. C. Penney store. It was admitted that J. C. Penney had stores in all of the surrounding cities and towns. (Tr. pp. 16, 150, 154, 160, 179).

The pants were identified as being "rayon pants" found "in a willow twig about 14 feet from the trail that leads from the road to the river"; "about 6 feet from the ground and wrapped about a twig***as though the wind had blown around." Dr. Beeman said of Exhibit 13: "A pair of J.

C. Penney, size 16, pink rayon pants, that had been torn down front and in the crotch, was a mixture of human blood and seamon." Martha Hildebrand testified that she usually purchased her daughter's clothing at J. C. Penney's store, and that state's Exhibit 13 is of the same type as the pants that Ruth wore, but when asked "would you be able to say whether it is the same ones or not?" she answered: "I cannot tell that." The mother did not identify the pants as being the size, style or color of those worn by her daughter, but only as being the same type as those worn by her daughter. The size, style and color to which respondent refers came from the description of the pants by Captain Gurdane and the description of the same by Dr. Beeman, and they were describing the pants found. There was no evidence whatever to connect the pants found, so far as the last two witnesses' descriptions are concerned, with any that could have been worn by Ruth Hildebrand. In fact, no one identified or attempted to identify them as being a garment of Ruth Hildebrand.

State's Exhibit 8 shows the rubbish, worn clothing, discarded articles and dumpage, from which accumulations State's Exhibit 13 could have been blown by the wind as indicated by Captain Gurdane.

It could have been a garment of any one of the scores of women who had used the common trysting place during the month of June, 1943, prior to the 21st thereof.

It was without identification and was in no wise con-

nected up with any fact in the case.

Had the Exhibit been identified as an article belonging to Ruth Hildebrand, it would have tended to establish no fact in issue in this case, since it is admitted that defendant and Ruth Hildebrand were, on the night of the 7th of June, 1943, at the trysting place and that they had sexual intercourse while there. (Tr. pp. 17, 37, 55, 57, 67-68, 90, 177-178, 230, 235).

ASSIGNMENT OF ERROR NO. VI

The Court erred in admitting in evidence, over the objection of defendant, State's Exhibit No. 16.

POINTS AND AUTHORITIES

Constitution of the United States of America, Amendments VI and XIV., Section 26-937 O. C. L. A, 1940.

E. E. Ashcraft and John Ware vs. State of Tennessee on Writ of Certiorari to the Supreme Court of the State of Tennessee, handed down by the U. S. Supreme Court May 1st, 1944.

McNabb vs. United States, 318 U. S. 332, 1943.

20 Amer. Jur. Evidence 479, 480, 482, 483, 487, 496, 500, 501, 503, 514, 515 and 522.

ARGUMENT

As shown by the facts hereinbefore set out, upon the order of a Captain of State Police, defendant was at one-ten p. m., on the 7th day of July, 1943, without accusation, without being informed of the charge made against him, without warrant, without the advice or assistance of

friends, without being advised of his right to counsel, was taken from Hillsboro, Oregon, to the Headquarters of the State Police in the vicinity of Portland, Oregon.

Upon the arrival at said headquarters he was seated in a straight-backed chair where he was kept constantly, with possibly three or four very short intermissions, until approximately 11:30 a. m. on July 8th, 1943. He was not permitted to sleep and was questioned by from three to five armed officers, there being as many as seven officers at some intervals of the time, who had domination and control over him.

He was constantly sweated, kept awake by being furnished a stimulant in the form of Coca Cola and denied opportunity to recline for the purpose of sleep. During which time there was applied to him questions and exacted from him answers that together make up State's Exhibits Nos. 17 and 16. The process being to, first, let him sit in the chair, assigned to him for a period of time allowing him to get apprehensive and jittery, then to sweat him and grill him for an extended period of time and then take his statement in the manner and form we have indicated.

When State's Exhibit No. 17 was extended, two officers appeared on the scene, they examined it and found that it did not contain the incriminating statements that they believed would secure conviction. Whreupon, the process was repeated, first, a period of nerves, then a period

of extended sweating and grilling and then the questions and answers that compose State's Exhibit No. 16. They were extended and defendant was required to sign a number of copies in the same way that he had signed copies of State's Exhibit No. 17.

All the time defendant was without knowledge of the charge made against him, without counsel, without advice of relative and friends and not before a magistrate.

Defendant's testimony shows that there were threats in the form demonstrations, consisting of removing his coat and threatening gestures by one of the officers. That if he did not answer, he would be sent to the gas chamber. He was told how the gas chamber was operated.

His testimony shows that he became so exhausted and sleepy that he did not know or realize what he was doing.

In transit from the State Headquarters to Dallas, by way of Hillsboro, he was told to always tell it the way he had been told to tell it, that if he did not he would be sent to the gas chamber.

When he arrived at Dallas in the custody of two officers he was taken before the Grand Jury, after having been advised by the District Attorney that he did not need counsel, at a time when the District Attorney knew that defendant's mother had procured counsel and that said counsel had requested that he be permitted to interview said defendant.

That when said counsel arrived in Dallas he was deprived of the privilege of interviewing defendant until he had requested and secured from the District Attorney a direction to the Sheriff to permit defendant's counsel to interview him. That by the time the District Attorney so directed it was too late for defendant to be interviewed by said counsel until he was brought before the Court to be arraigned.

That no warrant was issued for defendant and he was not informed of the charge made against him until he was brought before the Court to be arraigned.

Defendant is admitted to be of low mentality. That the evidence as to his mentality shows that the degree of his mentality is, as claimed by the State, a dull-normal, down to, as shown by a Standard Test made by an expert, to be a moron with an intelligent quotient of 65.

Defendant was required to say, as shown by State's Exhibits 18 and 17, that he had not been abused by the State officers, that no force or threats had been used against him. That as shown by the testimony of Dr. Beeman, defendant was forced to strip that the Doctor might make an examination and testify that defendant's body showed no marks of violence, as shown by the testimony of Captain Gurdane and Dr. Beeman.

To enter "Lovers' Lane" by way of the log dump the speed of the automobile must have been reduced to three or four miles an hour. Ruth could have easily jumped

from the car. Where the car stopped, to the spot where the blanket was spread, was a distance of forty-five or fifty feet. Ruth did not run, had she, a girl of her age and size could have easily ran away from a man of Layton's size and weight. There was a residence within calling distance and a scream would have brought help. She took her place on the blanket, for had she been put there by force there would have been marks on her body.

We must reach the conclusion that the act of intercourse on the blanket was with the mutual consent of the parties. There was, therefore, no rape.

The attempt to commit rape is the act of an ardent male, and ardor does not exist immediately after an ejaculation.

While the female of some of the spiders eats the male at the conclusion of the sex contact and, if confined, the female and male mink will fight at the close of the act, we know of no male, nor even a moron, that had the tendency, inclination or the remotest desire to kill the female at the close of the sex embrace.

Then we must reach the conclusion that there was no attempt to commit rape, but that in the darkness, neither knowing where the bank was, that while engaged in some sex play, simple and foolish though it might have been, Ruth Hildebrand fell over the bank at a point where it was so steep that she rolled into the water and was drowned. Where her nude body was found.

It is today recognized by all psychologists that mental force applied such as a siege of nerves is the most paralyzing and mentality debilitating.

If the third degree is applied by the use of blows the victim throws out a defensive mechanism in the form of resentment and mental retaliation. As a result sweating and third degreeing persons know that they can work their nefarious end more completely by producing mental confusion and psychic exhaustion, especially is that true when applied to one of a mental age of 9 years and 8 months or even a dull-normal.

The method and procedure by which State's Exhibit No. 16 was procured was exactly that of the German Gestapo. the only difference being that the Gestapo would have been merciful enough to have taken the defendant at daylight on the morning of July 8th and shot him.

Such methods are not intended to and do not secure the truth. They get what the inquisitors want or think they want.

In this case, State's Exhibit No. 17 contained the things that the first three inquisitors wanted.

But, in the night, when two additional inquisitors appeared, they decided that State's Exhibit 17 did not contain enough. In their opinion it would not sustain a conviction, as a result, the five inquisitors then decided that they wanted something else and in State's Exhibit No. 16 they secured it. In fact the testimony of one of their

mber shows that had they decided that they wanted mething more or different, they would have continued til, through taking turns, they were exhausted. The ocess being to give the victim time in silence to become tery, during which time his imagination would run riot all the things that could and it appeared would happen him. Then to grill him and rehearse the questions and swers, pointing them as to directness and response.

Then to make a show of fairness they called in a reorter, dictated as rehearsed, had the questions and answers edited and extended.

In this case, after the State Police got through with the efendant, if Exhibit 16 were admitted, a trial was the rossest kind of a farce. The defendant would have een tried on the afternoon and nifht of July 7th, 1943, nd the morning and forenoon of July 8th. The State olice, in uniform and with side-arms, acting as committing magistrate, prosecutor, Grand Jury, Judge and Jury. s long as such procedure can take place no citizen is afe. Such a method inhibits law enforcement, it encourges laziness on the part of law enforcement officers, discourages intelligence and skill and rewards stupidity.

It is an "easy but self-defeating" way "in which brutality is substituted for brains as an instrument of crime detection." Quoted from opinion in McNabb vs. United States, Page 344.

To cite the pages of the printed transcript from which all the factual material is drawn for the last above argument would require a Citation of so many pages as to add to the arduousness of the task of investigating the facts rather than assisting.

CORROBORATING EVIDENCE WAS ABSENT

POINTS AND AUTHORITIES

Section 26-937, O. C. L. A., 1940, reads as follows:

"A confession of a defendant, whether in the course of judicial proceedings or to a private person, can not be given in evidence against him, when made under the influence of fear produced by threats; NOR IS A CONFESSION ONLY SUFFICIENT TO WARRANT HIS CONVICTION, WITHOUT SOME OTHER PROOF THAT THE CRIME HAS BEEN COMMITTED."

Constitution of United States, Amendment XIV.

ASSUMING THAT STATE'S EXHIBIT NO. 16 IS SUCH ADMISSION OR CONFESSION AS SHOULD BE ADMITTED, IT IS ENTIRELY WITHOUT THE CORROBORATION REQUIRED BY THE ABOVE QUOTED SECTION.

It is admitted that the parties were there that night, that their clothing was removed and that they had intercourse on the blanket.

Now, assuming, a thing so remote, as that the pants found (State's Ex. 13) were the ones worn on that even-

ing by Ruth, the fact that they were found hanging on a bush, 14 days later, is in no way inconsistent with the theory that without any contribution by defendant, as a result of unforseen accident, Ruth fell over the bank, rolled into the river where she was drowned; there were no marks on the body to indicate any holding, struggle or blows.

If petitioner is guilty as charged by the indictment it is because with intention, and the other essential elements of murder in the first degree, he forced Ruth Hildebrand into the water where she was drowned, or that while attempting to commit rape he caused her death. On those two facts the corroboration must make its impression. The pants (State's Exhibit 13) were either those of Ruth Hildebrand or they were not. In other words, they could have been Ruth Hildebrand's pants and her drowning could have been entirely accidental or they could have been the pants of another, and Ruth Hildebrand's drowning been accidental.

At "Lovers' Lane," so-called because a lot of people came there to park, on a common dumping groud close to a military reservation where there was a constantly changing population and as a result much discarded clothing to be eliminated so that there would be more room in luggage, three teen aged girls found a part of a brassiere. It had a J. C. Penney store tag on it; most of the girls in the vicinity purchased their clothing at that store and

there were J. C. Penney stores in all the surrounding towns, and there was nothing uncommon about the brassiere.

There was no evidence to show that the brassiere was the one worn by Ruth Hildebrand, in fact the chances are many to one that it was not. If it was it would show nothing more than was revealed when the body was found nude.

Appellant testified that they undressed before they had their sex contact and that is confirmed by the facts that there were no marks on her body that would indicate that she was dragged from the car down the path to the place the blanket had been spread in preparation for the sex embrace.

At the time of the grilling of the appellant the officers knew of the finding of the pants and brassiere. They could have and doubtless did find many other things. It is rather astounding that in a day and night grilling they did not secure some corroboration of the story they had consciously or unconsciously decided to get. There is nothing in the entire record that tends to show that Ruth Hildebrand's drowning was other than accidental save and except State's Exhibit 16 and in that respect it is entirely uncorroborated.

THE ASSIGNMENT OF ERRORS NOS. VII, VIII, IX, X AND XI

The Court's failure to instruct the Jury to bring in a verdict of "Not Guilty."

The Court's failure to instruct that it was the duty of the Jury to find whether or not alleged confessions had been voluntarily made and applying the test of spontaneousness as one of the determining features.

The Court's failure to instruct that there must be corroborating evidence to each and all of the essential elements of the crime.

The Court's failure to instruct that it was the duty of the Jury, in arriving at a decision, to consider all of the circumstances surrounding the making of the alleged confession, including the mentality of the accused, the length of time consumed in obtaining the statement sought by the persons seeking the confession, the number and character of his inquisitors and the place or places wherein the questioning of the accused, which resulted in the alleged confession, took place.

Each and all constituted error after the Court had failed to exclude the so-called confession, the same being State's Exhibit No. 16.

POINTS AND AUTHORITIES

The authorities in support of exceptions from VII to X, invclusive, are the same as those cited in support of exception No. VI.

ARGUMENT

It is basically essential that for a confession to be admissable, it must be free from promises of immunity or reward; that it be not induced by sweating, threatened force or force; it is to be viewed with caution; must be corroborated, and in arriving at its admissability, the physical and mental ability of the accused; the number, equipment and appearance of the inquisitors; the length of the inquisition; the circumstances of its making; the access of the accused to advice of relatives and friends; whether or not accused had been deprived of his constitutional and statutory rights; as to his right to know the acquisition made against him; to be taken immediately before the magistrate; to be immune from being required to give testimony against himself; to have the advice of counsel: should all be taken into consideration to determine whether or not such confession meets the requirements as a condition precedent to its admission.

Respectfully submitted,

RICHARD HARRY LAYTON,

In Propria Persona